IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9870 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANALAL R GADHIA

Versus

STATE OF GUJARAT

Appearance:

Mr P M Raval, Sr.Advocate for MR HARIN P RAVAL for Petitioner

Mr S K Patel, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/10/2000

ORAL JUDGEMENT

The petitioner has preferred this petition under Article 226 read with Articles 14, 19 21 and 22 of the

Constitution of India challenging the order of detention dated 12.7.2000 passed by the learned District Magistrate, Amreli in exercise of powers conferred on him by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. The petitioner has contended that in this matter the order of detention against the petitioner is illegal on several grounds. The petitioner has contended that there was delay in disposal of the representation submitted by the detenu. It has also been contended that the petitioner required certain documents which were not supplied and, therefore, further detention of the petitioner may be treated to be illegal. It is further contended that the respondents had carried out chemical analysis of cotton seed oil in respect of one tin out of 500 tins and, therefore, it cannot be said that all those 500 tins contained adulterated oil and, therefore, the detention was not justified. It is further contended that the matter is related to adulteration in edible oil and it cannot be a ground for detaining the petitioner under the said Act. It has also been contended that on the whole, the detention order passed against the petitioner is illegal and is required to be set aside.

3. It is, therefore, submitted that the present petition be allowed and the order of detention against the petitioner be quashed and set aside and the petitioner may be set at liberty forthwith.

4. Rule was issued in this matter and in response to the service of rule, Mr S K Patel, learned AGP appeared for respondents No.1,2, and 3. He has also filed affidavit on behalf of the respondents which is taken on record. Ms. P J Davawala, learned Addl.Standing Counsel appeared for respondent no.4-Union of India. Ms. Davawala had submitted affidavit of the Under Secretary of the Union of India which is taken on record.

5. I have heard the learned Advocates for the parties and have perused the papers. Learned Sr. Advocate for the petitioner Mr P M Raval has argued that there was delay in disposal of the representation submitted by the petitioner and, therefore, the further detention of the petitioner may be treated to be illegal. On going through the papers on record, it is found that the representation was tendered by the petitioner on 27/28.7.2000 and it was disposed of on 10.8.2000. However, the affidavit submitted on behalf of the

respondent makes it clear that the competent authority had required further information from the subordinate officer and that naturally took some time in collection of the said material. This delay has been explained by filing affidavit of the officer concerned which shows that further details were called for and therefore, there was delay in disposal of the said representation. It is a fact that the detention orders are passed by District Magistrates and they are approved by the State Government. Therefore, when any representation is made, it will be necessary for the competent authority in the State Government to call for certain further materials with a view to consider the said representation. Therefore, in calling for certain information, some time may be required and if there is some passage of time in collection of such materials from the subordinate offices, then it cannot be said that the delay has not been explained. Viewing the matter from the said angle, in the present case, the delay caused in disposal of the representation of the petitioner has been explained satisfactorily and consequently the delay will not be a ground for allowing the petition and for quashing the order of detention. It is further contended by Mr Raval, learned Sr.Advocate for the petitioner that the petitioner had required the reports of the chemical analysis of the oil sample which was taken from Dhari. It appears from the record that some samples were collected from Dhari and some were taken from Mahuva in Bhavanagar district. There is no dispute that the samples were analysed. There is also no dispute that the analysis reports of Dhari were not supplied to the petitioner. It is a fact that the detention order has been passed because of the fact that the sample collected from Mahuva was not found to be in order and, no action has been taken on the basis of the sample taken from Dhari. Therefore, chemical analysis report of Dhari were not considered for the purpose of detaining the petitioner and, therefore, it was not necessary for the respondent to supply copies of these reports to the petitioner. Therefore, those copies were not supplied to the petitioner. There was no infirmity and no prejudice was caused to the petitioner for non-supply of the said reports and, therefore, this will not be a point favourable to the petitioner. Mr P M Raval, learned Sr. Advocate has further argued that out of 500 tins, sample was collected from only one tin and that was alleged to be adulterated. It was not necessary for the respondent to go for sample from all those 500 tins. If one tin is found to be adulterated, then appropriate action may be taken by the respondents. Here it is found that there was one tin which contained adulterated cotton seed oil.

The report is that it did not contain cotton seed oil but it contained mixture of other oils. The fact remains that the sample was collected from one tin and action has been taken on the basis of report of analysis which was obtained with respect to the sample collected from that tin only. In that view of the matter, when other tins were not touched, it would not be possible to agree with the arguments of Mr Raval that since the sample was collected from one tin, the detention order is to be treated to be illegal. Even if the other tins were found to be in order, it may not take the matter to a different corner.

6. It has, thereafter, been argued by Mr P M Raval, learned Sr.Advocate for the petitioner that even if the adulterated oil is sold out, then it may be an offence punishable under the Prevention of Food Adulteration Act, but it would not be a ground for detaining the petitioner under the said Act. For the said purpose, the learned Advocate for the petitioner has relied upon a decision in the case of KISHOR AMRATLAL PATEL v. RAJIV TAKRU & ORS (1987 (2) 1031). The relevant portion is reproduced as under:

> "In view of the aforesaid settled legal position, it has to be held that when ground no.12 amongst other grounds has been pressed in service by the detaining authority for basing the impugned order, his subjective satisfaction being a comprehensive one, would get still vitiated and the entire order will be liable to be struck down.
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> The aforesaid conclusion reached by the detaining authority himself in the grounds of detention leaves no room for doubt that despite what is stated in clause 2 of the grounds viz. that he is entitled to pass separate detention orders on different ground, in fact and in reality, he did not do so, but passed the impugned order of detention in a comprehensive manner by arriving at his subjective satisfaction in a combined manner basing the same not only on the breach of the provisions of the Essential Commodities Act and the order of 1981 but also on the breach of the Prevention of Food Adulteration Act, 1954. When the later breach reflected in ground no.12 has entered the composite process of subjective satisfaction of the detaining authority it must be held that the detaining authority has relied on a totally extraneous ground de hors the scope

> and ambit of section 3 of the Act. Once this conclusion is reached, the result is obvious. The comprehensive subjective satisfaction is found to be partly based on an irrelevant ground which would vitiate the entire subjective satisfaction and knock out the basis of the detention order wholesale."

On the basis of the aforesaid decision, the learned Advocate for the petitioner has argued at length that even if the oil was found to be adulterated, this could not be a ground for detaining the petitioner and, therefore, the order of detention is illegal.

7. On the other hand, learned AGP, Mr S K Patel has argued at length that the petitioner has not been detained simply on the ground that the oil was found to be adulterated. Learned AGP has relied upon the provisions contained under section 3(1)(b) of the Act and has argued that the petitioner has been gaining profit by selling adulterated oil and, therefore, he was required to be detained. For this purpose, learned AGP has referred to the observations made at page no.44. There it has been observed by the detaining authority that under the guise of selling cotton seed oil, the petitioner has been selling mixture of other oil carrying low price. It is further stated in the said grounds at page 44 that the normal cost of an oil tin containing cotton seed oil would be Rs.418/-. That instead, the petitioner used to sell micro-refined cotton seed oil at Rs.415/- per tin. It is further contended that the petitioner used to sell these oil tins by less price in open market. That in fact, such oil tins would carry price of Rs.391/- per tin and Rs.383/- per tin respectively. That thereby, the petitioner had earned profit of nearly Rs.20/- per tin and, therefore, he was guilty of blackmarketing the said oil.

8. The difficulty in accepting the aforesaid observations is that there is no material on record to show that cotton seed oil was available in market at Rs.418/- per tin or around that price. It is not on record to show that Soyabean and Ronak brand oil were available in market at the rate of Rs.383 and 391/per tin respectively at the relevant point of time. Therefore, these materials appear to have been obtained by the detaining authority without placing actual material on record. It is not clear as to from which corner, these details have been collected by the detaining authority. This shows that the detaining

authority has considered certain extraneous matters. There is nothing on record to show that such materials were kept on record. There is also nothing on record to show that such materials were conveyed to the petitioner along with other materials. It is, therefore, clear that the aforesaid aspect of the case has been considered by the detaining authority and the said material was totally extraneous to the materials on record. In that view of the matter, when the aforesaid materials were extraneous and not part and parcel of the material on record and it was not conveyed to the petitioner, it can be said that the detaining authority had considered materials behind the back of the petitioner and after passing the order of detention the same has not been conveyed to the petitioners. At the same time, it is a fact that so far as the edible oils are concerned, there is no restriction on prices at which the said oils were required to be sold. If there was adulteration in the oil, appropriate action could be taken against the petitioner. If there was blackmarketing, then the fact should have been brought on record as to how the blackmarketing took place. After bringing the matter on record, the same was required to be conveyed to the petitioner. In the present case, the matter has not been brought on record and it has not been conveyed to the petitioner. In that view of the matter, the petitioner did not get opportunity to meet the case of the respondent and the materials were not actually placed on record. In view of the fact that certain extraneous materials were considered by the detaining authority behind the back of the petitioner and the said materials were not placed on record and were also not supplied to the petitioner, the subsequent detention cannot be upheld. On this aspect of the case, it has to be held that the aforesaid extraneous materials taken into consideration by the detaining authority would stand as obstacle against the detention order of the petitioner. In my opinion, therefore, the impugned order of detention against the petitioner cannot be held to be legal and valid. In the aforesaid view of the matter, the orders suffer from the aforesaid infirmity of consideration of extraneous materials which are not on record and yet are considered behind the back of the petitioner. In these facts and circumstances of the case, the order of detention cannot be treated to be legal and valid and the same is required to be quashed and set aside. In view of the above, no other ground is required to be considered.

9. In view of the aforesaid, this petition is allowed. The impugned order of detention dated 12.7.2000 passed by the District Magistrate, Amreli is quashed and

set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute. No order as to costs. D.S. permitted.

20.10.2000 [D P Buch, J.]
msp